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Designing Democratic Institutions: Accountability, Responsiveness and the Reform of the Council of the European Union

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Abstract:

The widely perceived lack of legitimacy of EU decision-making has prompted a major debate about institutional reform. Improving democratic practice in the Council has been one of the key topics in the debates leading up to the Lisbon treaty. In general, we can distinguish between two models of democracy. The majoritarian model of democracy builds on the open competition of political camps who enjoy wide-ranging powers to implement their policy agenda once in office. In contrast, the consociational model of democracy relies on inclusiveness, compromises and power-sharing. I discuss the most prominent topics of the recent debate on institutional reform in the Council (voting threshold, Council Presidency, transparency) in light of these two models of democracy. The current practice of decision-making in the Council resembles the consensual model. The changes in the Lisbon Treaty are unlikely to make any significant difference in this regard.

1. Introduction

The widely perceived 'democratic deficit' of the European Union has spawned a major debate among scholars and politicians. Even though the European Union's institutional set-up is in line with democratic practice at the national level, its policies do not seem to enjoy the same level of legitimacy as those in national political systems. Because the European Union has a growing influence in the lives of European citizens, increasing the legitimacy of its policies has assumed high priority on the agenda of European political elites. One of the explicit goals of the treaty reform process leading to the Lisbon treaty was to address this shortcoming of the Union. The envisaged reform was meant to take up the 'democratic challenge' and bring Europe closer to its citizens according to the Laeken Declaration. One of the topics raised by the debate was the reform of legislative decision-making in the Council. The Council is a key body in the legislative process as all legislative proposals need the consent of the Council to become law.

The scholarly debate on the 'democratic deficit' focused on two issues. First, whether or not there is a democratic deficit. Second, what changes – if any – are necessary to successfully address this issue. With regard to the existence of a democratic deficit, Majone (1998) argues that the EU is (only) setting regulatory policies. To ensure welfare gains it is desirable to limit the direct accountability of its elites. Others have pointed out that the institutional structure of the EU fulfills all criteria of a democratic polity (Zweifel 2002; Crombez 2003). Moravcsik (2002) argues that the impression of a 'democratic deficit' is misguided for two reasons. First, it overlooks the relationship between the national and European level. Like Majone, he argues that many decisions taken at the European level are in areas which are often de facto made by a 'technocracy' because they do not involve redistribution and are of little importance to citizens. Second, the diagnosis of a democratic deficit is in his view often based on a comparison to an unrealistic ideal of democracy. The limited competences of the Union, the regulatory nature of its policies, the increased powers of the European Parliament, and the involvement of national governments via the Council ensure that EU policy-making is nearly always 'clean, transparent, effective and politically responsive' (Moravcsik 2002: 605). In other words, there is no democratic deficit. Even if that is the case objectively, the fact remains that public support for the EU has decreased since the 1980s and continues to be at relatively low levels (Hix 2008: Ch. 4). Furthermore, European citizens currently de facto do not have an opportunity to decide on the EU policy agenda or hold their representatives accountable for their actions in the EU (Follesdal and Hix 2006: 552). One proposed remedy for this situation is to increase the level of political contest in the

European Union (Follesdal and Hix 2006). This could be achieved if a majority in the European Parliament would have stronger control over legislative decision-making in this chamber, political camps would openly compete for the office of the Commission President and debates in the Council would be more transparent (Hix 2008: Ch. 8). Bartolini (2006) points out that this politicization of EU policies via a more majoritarian competition among political parties also contains several risks. Indeed, the European Union might provide more favorable conditions for the consociational model of democracy (Gabel 1998).

This paper discusses the reform options for the Council that have been debated in the process leading to the Lisbon treaty in the light of this debate. The most prominent topics of discussion on the reform of the Council have been the voting rule, the Council Presidency and whether or not legislative debates should be public. I compare the various reform options and the provisions of the Lisbon treaty to the ideal-typical prescriptions of democratic theory. Democracies can follow to ideal-types, the majoritarian and the consensual model of democracy. In the majoritarian version, political camps compete with each other for office. The winner enjoys wide ranging powers to implement the policy agenda of the majority. In contrast, the consensual model comprises broad coalition, compromise and a minority veto. The current practice of legislative decision-making in the Council follows the consensual model of democracy. The Lisbon treaty is unlikely to change this. Whether or not decision-making in the EU should follow the consensual or majoritarian model depends on one's view on the necessity and existence of a common identity for legitimate rule by a majority.

2. Two Paths to Legitimacy: Majoritarianism and Consociationalism

The modern democratic ideal has been famously summarized as requiring 'government of the people, by the people and for the people'. This notion is closely related to the idea of self-government. 'The role of citizens in a democratic society is to choose the overall aims of the society.' (Christano 1996: 207). A political system is democratic if the people are sovereign and hence – directly or through a representative chamber – rule themselves. Democratic systems are, in turn, held to be legitimate forms of government. In general, policies can enjoy input or output legitimacy. Input legitimacy (government by the people) is derived from the consent of those who have to comply with a policy. Output legitimacy (government for the people) is based on policy outcomes: 'policies can claim legitimacy if they serve the common good and conform to criteria of distributive justice.' (Scharpf 1997: 153) Thus, policies in a representative democracy advance the interests of the people or have to reflect the will of the people to be considered legitimate. We can distinguish two aspects in this regard. First, a political system has to address the concerns of its citizens. A political system in which representatives ignore topics of concern of the citizens or in which the rule of the people excludes some topics could hardly be called legitimate (cf. Dahl 1989: 112-4). Second, decisions by the representatives have to be taking in accordance to the preferences of the citizens. In other words, democratic government has to be responsive (Dahl 1971: 2). Input legitimacy focuses on how political institutions connect the 'wish of the people' to public policy. Output legitimacy asks if public policy is in line with the interests of citizens. As citizens' preferences are rarely identical, this raises the question of whose concerns and preferences have to be included.

According to the majoritarian model of democracy, the answer is the preferences of the majority (or even plurality) of citizens. Power is shared through the alternation of (two) political camps in government. Once in government, the winning side has sweeping powers to implement its will. One mechanism to ensure the effective rule of the majority is agenda control. By limiting the scope of issues to be decided to the ones favorable to the majority a clear overall shift in policies according to the aims of the majority can be achieved (Cox and McCubbins 2005: 2-5). Because majoritarian democracy concentrates power '[r]esponsibility for policy is obvious' (Powell 2000: 5). Consequently, citizens (or at least a majority) can directly hold their representatives accountable (e.g., in elections). Majority rule can be based on the notion of input legitimacy if the individuals concerned share a collective identity (cf. Dahl 1989: 146-9; Scharpf 1999: 7/8). Majority rule is acceptable to its subjects the more

homogenous they are, the less a structural majority exists which prevents alternation in power, and the less fundamental issues are affected (Dahl 1989: 161).

In contrast to majoritarianism, the consensus model of democracy tries to maximize the number of views included in decision-making. Power is widely shared and dispersed. A broad coalition is needed to enact public policy (Lijphart 1999: Ch. 1). Whereas the majoritarian version relies on competition for office, consociational theory builds on accommodation. Rather than presenting competing alternative policy packages to the citizens and letting them choose one of them, the political elites in a consociational system would deliberate in private to find a compromise solution that is accepted in a consensual manner. This implies that a minority can prevent a majority from making a decision if it deems that it would unduly reduce its autonomy or violate its minority rights (Lijphart 1966). Hence, 'the majoritarian model of democracy is exclusive, competitive, and adversarial, whereas the consensus model is characterized by inclusiveness, bargaining and compromise.' (Lijphart 1999: 2). Because of the inclusive nature of decision-making in the consensus model and the possibility of a minority veto, the interests of minorities are protected. Thus, a common identity is not needed to derive legitimate decisions as a (structural) majority cannot overrule the minority (Scharpf 1997: 188). The diffusion of power in the consensus view of democracy however also implies that responsibility for political decisions is harder to discern (Powell 2000: 5). Indeed, to reach consensus among the different groups represented in a political system it might be necessary to give their representatives some leeway in negotiations on common policies. 'Negotiated democracy can only succeed in achieving welfare efficiency and distributive fairness [i.e., output legitimacy] *among* units by weakening democratic accountability *within* units.' (Scharpf 1997: 189, original emphasis) In general, there is a trade-off between inclusiveness and accountability. The more inclusive a government, the smaller are the chances of alternation and hence accountability (Kaiser et al. 2002).

In the next section I discuss how the reform options for the Council can be associated with the majoritarian and consociational model of democracy.

3. The Reform of the Council

The reform of the Council was one of the most contested issues in the Convention on the Future of Europe (König, Warntjen and Burkhart 2006) and the subsequent debate on institutional reform. The Laeken Declaration, which mandated the Convention to work out a proposal on institutional reform, raised three issues in particular with regard to the Council:

- The voting threshold
- The six-monthly rotating Council Presidency
- Public deliberation of legislation

The first two topics had been on the reform agenda before. Since the Single European Act introduced qualified majority voting discussions on treaty reform have always included the question of a re-weighting of votes and a change of the voting threshold. Extending the term of office of the Presidency has also been repeatedly suggested by expert panels considering institutional reform in the Union.

The Choice of a Voting Rule

In international negotiations, agreements usually require unanimity. Decisions in national legislatures, on the other hand, often only need a simple majority. In the Council of the European Union, unanimity has been giving way to a lower threshold in a large number of policy fields since the Single European Act. The voting threshold has an effect on inclusiveness, responsiveness and accountability.

In terms of inclusiveness, there is a qualitative difference between unanimity and majority voting, regardless of the required size of the latter. The voting rule of unanimity stands out as it is the only voting rule which grants all members veto power. Having veto power allows a member to prevent any change of the status quo that runs contrary to its interests. In particular, under unanimity no collective decision can be reached that implies costs for a member without its consent or compensation (Buchanan and Tullock 1965: 81). Thus, unanimity is in line with a consensual version of democracy as it includes all interests and makes broadly supported compromises necessary. All voting threshold that require less than unanimity allow a member to be outvoted.

Justifications of majority rule build on the argument hat the status quo should not be privileged. Any voting threshold requiring more than a simple majority implies that a minority can prevent a majority from adopting its preferred policy. Using the analogy to the case of a minority adopting a policy,

proponents of majoritarianism would argue that only simple majority yields legitimate outcomes. In the words of Dahl's advocate of majoritarianism: 'If it's wrong to allow a minority to prevail over a majority, then isn't it also wrong to allow a minority to block a majority?' (Dahl 1989: 137) Further arguments for the legitimate use of majority rule are that it maximizes the average utility and allows the greatest number of citizens to rule themselves. These arguments are related. While majority rule allows members to be outvoted, under certain conditions the average utility of a group is maximized by majority rule because the losses of the minority are outweighed by the benefits of the majority. Consider a decision to change an existing policy and three voters. Two voters would prefer a change in policy, one prefers the status quo. If they all value their most preferred outcome equally, then majority rule would give the greatest number of voters their most preferred outcome and maximize the utility of the group as a whole. A higher voting threshold would give a minority (in this case a minority of one) the opportunity to frustrate the wishes of the majority, which would lead to lower utility overall.

However, it is commonly held that the legitimate use of majority rule presumes the existence of a common identity (Dahl 1989: 147; Scharpf 1999: 8). 'The authority and legitimacy of a majority to compel a minority exists only within political boundaries defined by a demos.' (Weiler 1995: 222) In the absence of a common identity, unanimity or a consensual style of decision-making are more likely to lend (input) legitimacy to a decision. This is particularly true in the case of a 'structural majority' which precludes an alternation in power and leaves one group of citizens constantly aggrieved.

In contrast to inclusiveness, responsiveness is inversely related to the voting threshold. Both, the average proximity of an outcome and the chances of a new issue being addressed are negatively affected by an increase in the voting threshold.

Changing the voting threshold from unanimity to simple majority moves the outcome from the lowest-common denominator to the position of the median voter (assuming Euclidean preferences on a single dimension). Consider a committee consisting of seven members (P1 through P7) that has to decide on a one-dimensional issue (figure 1). According to the median voter theorem, the outcome using simple majority will be the ideal point of the median voter (P4). In contrast, under unanimity the outcome will be the lowest common denominator (i.e., P1). On average, P4 is closer to the ideal positions of the committee members than P1. Hence, the overall utility of P4 is higher than that of P1. The move is however not pareto-efficient. While it improves the utility of most members, one player (P1) is worse off.

A higher voting threshold, ceteris paribus, also decreases responsiveness. A higher voting threshold implies that more actors have to give their consent, turning some of them effectively into veto players. This often implies that more policy positions have to be accommodated and might make it impossible to change the status quo. In the example of figure 1, any policy that is located between P1 and P7 would be subject to gridlock under unanimity rule. No unanimous decision could be reached to change a policy in that range. In contrast, under majority rule P4 through P7 could change any policy to the left of P4. Likewise, any policy to the right of P4 would be changed by a majority consisting of P1 through P4. If the status quo is biased towards a subgroup of citizens, high voting thresholds could lock in decisions that are running against the wishes of a majority of citizens. According to Scharpf (1999) this is the case in the European Union. According to his argument, the high voting threshold in the Council impedes its ability to respond to the wishes of European citizens in (re-)regulating the economy and providing social protection at the European level.

A higher voting threshold can also thwart accountability. Increasing the voting threshold tends to increase the number of interests that have to be taken into account. This leads to an overall compromise that does not directly reflect a position of any of the groups involved in the agreement. Subsequently, it becomes harder for citizens to identify the group responsible for the decision and hold them accountable. Furthermore, a broad coalition makes it harder for citizens to 'throw the rascals out'.

The Council Presidency

The Presidency is one of the striking features of the institutional set-up of the Council. Originally designed as an alternating chairman of the meetings of ministers, it has taken on additional responsibilities over the decades and provides legislative leadership in the Council (Tallberg 2006: Ch. 3). Recent debates on treaty reform have focused on the selection mode of the Presidency. In particular, a change from the rotation system to an elected President has been discussed (Norman 2005: 117). The Lisbon treaty has established an elected Presidency for the European Council. This meeting of the heads of government acts as the final arbiters in legislative disputes which could not be resolved of the ministerial level. The vast majority of decisions are however taken by the Council of the European Union, i.e. the meetings of ministers.

In the majoritarian version of democracy, the majority would enjoy wide powers to implement their agenda (Lijphart 1999: Ch. 1). In the legislature, this could be ensured by a partisan leadership office with procedural privileges such as (de facto) gate-keeping or agenda-setting powers. Both powers

would allow the majority to skew decisions in line with their preferences, restrict the topics on which a decision is made and prevent divisive votes. The latter is important for the majoritarian model as it allows the political camps competing for office to present clear alternatives (Cox and McCubbins 2005; Tsebelis 2002). Consider a situation where decisions are taken by simple majority (figure 2). If no actor has special powers, the outcome would be the position of the median actor (MC) regardless of the location of the status quo (solid line). Now assume that there is a cohesive fraction that constitutes a majority in line with the majoritarian model of democracy. Let us say that the median of this majority coalition (ML) is located to the left of the overall median. If the majority controls a leadership office with gate-keeping power it could skew the decision agenda in its favor. Whether or not the outcome would differ from the situation where no actor has procedural privileges depends on the location of the status quo. We can distinguish two situations. The status quo can be either closer (II) or further away (I, III) from the ideal position of the majority coalition than the committee median. If the status quo is closer, then the majority will use its gate-keeping power to prevent a change of the status quo to the position of the committee median. Hence, the status quo prevails (dotted line). We should note that some members of the majority coalition would have an incentive to defect from the majority line as represented by its median member. For some members of the majority coalition (e.g., the committee median) the evaluation of the relative merits of the majority and committee median differ from those of the majority median. The cohesiveness of the majority faction would have to be ensured by exogenous measures. Furthermore, this version of majoritarianism would not lead to the majority of the citizen's preferences being implemented – even if their representatives have similar or identical preferences - but rather to the rule of a majority of the majority.

In the majoritarian model of democracy the majority would establish a leadership structure in the legislature as its instruments. The leadership office would be elected by the majority and enjoy procedural powers to further the majority's causes. In contrast, the consensus version of democracy would disperse power. A leadership office in the legislature would be reduced to being a mere legislative clerk and/or its use would be shared. The constitutional treaty established an elected President for the meetings of the heads of government (Art. I-22). At the ministerial level where legislative decisions are made, however, the Lisbon treaty keeps the current system of equal rotation (Art. 203 TEC). Furthermore, the procedural powers of the Presidency remain unchanged. The monopoly for making of legislative proposals lies with the Commission, which is nominated by the Council members. Despite this link the preferences of the Commission might not reflect the majority view in the Council as the composition of the Council is subject to change due to national elections.

Thus, a majority in the Council cannot keep items completely off the agenda even if it had complete procedural control over the Council. However, it could in principle delay legislation (in first reading), restrict amendments by the Council to the Commission's proposal, and bias the Council's bargaining position in the conciliation committee. In its current form, the Presidency however does not enjoy strong procedural powers comparable to the majoritarian office of, say, the Speaker of the House. Nevertheless, establishing an effective leadership structure implies some delegation of authority (Warntjen forthcoming). Indeed, there is evidence that the Presidency can tilt decisions in its favor (Schalk et al. 2007; Warntjen 2008) and push for legislation in areas it deems particularly important (Warntjen 2007). By limiting the Presidency's term in office and by using a system of rotation this power is widely dispersed. In sum, the office of the Presidency in its present form follows the consensual model of democracy. The changes contained in the Lisbon Treaty are unlikely to change that.

Deliberation in the Council: Public or Private?

One frequent criticism of EU politics is its seemingly intransparent nature. Arguably, legislative decision-making in the Council is as least as transparent as it is in national politics (Gabel 1998: 471; Moravcsik 2002: 612-3). Nevertheless, the member states raised the issue of transparent decisions in the Council explicitly in the Laeken Declaration and highlighted the importance of transparency to raise the legitimacy of EU policies:

> 'The European Union derives its legitimacy from the democratic values it projects, the aims it pursues and the powers and instruments it possesses. However, the European project also derives its legitimacy from democratic, transparent and efficient institutions. … The first question is thus how we can increase the democratic legitimacy and transparency of the present institutions, a question which is valid for the three institutions… Should the Council act in the same manner in its legislative and its executive capacities? With a view to greater transparency, should the meetings of the Council, at least in its legislative capacity, be public?' (Laeken Declaration on the Future of Europe)

Subsequently, the Convention on the Future of Europe discussed the possibility of having a separate Council formation which would decide on all legislative proposals and would by default act in public (Norman 2005: 111, 150). This suggestion is in line with majoritarian model of democracy because public debate in the legislature allows for fiercer competition among the political camps vying for

office. If citizens can follow the decision-making process, they can hold their representatives directly accountable for their actions (cf. Hix 2008: 101, 103, 150-2). In contrast, in the 'negotiated democracy' of consociationalism, deliberations outside of the public's eye allows representatives to make the necessary concessions to reach fair agreements that increase welfare overall: 'negotiations could not succeed if all communications at the bargaining table were publicized' (Scharpf 1999: 189). Negotiators might not reach possible mutually beneficial agreements if the public gaze induces them to take on overly uncompromising positions (Stasavage 2004). Thus, transparency involves a trade-off between accountability and efficiency. Whereas the majoritarian model of democracy would emphasize accountability, the consensual model of democracy would lean towards efficiency.

Although the Council has increased the access to its deliberations, most of the decisions are still de facto reached behind closed doors (Stasavage 2004: 691-5; Hix 2008: 151-2). Legislative practice (before and after the Lisbon treaty) thus resembles consensual rather than majoritarian decision-making.

In sum, before and after the Lisbon treaty legislative decision-making in the Council follows the consociational model of democracy (table 1). In institutional terms, a (simple) majority controls neither the agenda-setting process nor the voting outcomes. Furthermore, the most relevant parts of the deliberations are conducted in private.

4. Conclusion

Democratic theory suggests two paths to legitimacy. The majoritarian model of democracy builds on the competition of political camps, which alternate in power. The consensus model of democracy relies on inclusiveness and power sharing. Applying these models to legislative decision-making in the Council would yield two different institutional settings. The majoritarian version would call for simple majority voting, a strong partisan leadership office and public debates. In contrast, the consensus model would consist of unanimity, a rotating and/or weak chairmanship and would lean towards private discussions to find compromises. The agreement reached in Lisbon sits uneasily between these two versions of democracy. In practice, decision-making tends to be more in line with the consensus model. Unanimity has yielded to qualified majority voting in most policy fields. Majoritarian voting along clearly demarcated political lines however is unlikely as long as the voting threshold remains relatively high. Furthermore, policy positions are often idiosyncratic rather than being aligned on one political cleavage and a 'culture of consensus' persists. The meetings of the ministers in the Council where legislative decisions are made continue to be chaired by a rotating Presidency. The office of the Presidency also did not gain any procedural powers. Although the 2004 enlargement might have strengthened the hand of the Presidency, this implies that in effect the power over the decision agenda remains widely dispersed in the Council. Finally, decisions continue to be made behind closed doors.

A normative assessment of this state of affairs depends on one's view on the necessity of a collective identity to reach legitimate decisions via majoritarian means. Furthermore, the choice between the majoritarian and the consensual model involves trade-offs between accountability, responsibility and inclusiveness.

Table 1: Majoritarianism, Consociationalism and Decision-making in the Council

|	Majoritarianism	Consociationalism	Council of EU
Voting rule	Simple Majority	Consensus Minority veto	Unanimity or qualified majority voting 'Culture of consensus'
Legislative Organization	Majority control of agenda	Power-sharing	Rotating Presidency with limited procedural powers
Transparency	Full	Limited	Limited

Figure 1: The Choice of the Voting Rule

P1.
SQ   P2   P3   P4   P5   P6   P7
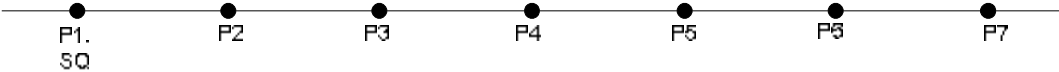
Figure 2: The Effect of Majoritarian Gate-Keeping

Outcome

I   II   III

MC

ML

MC'

MC'   ML   MC

Status Quo
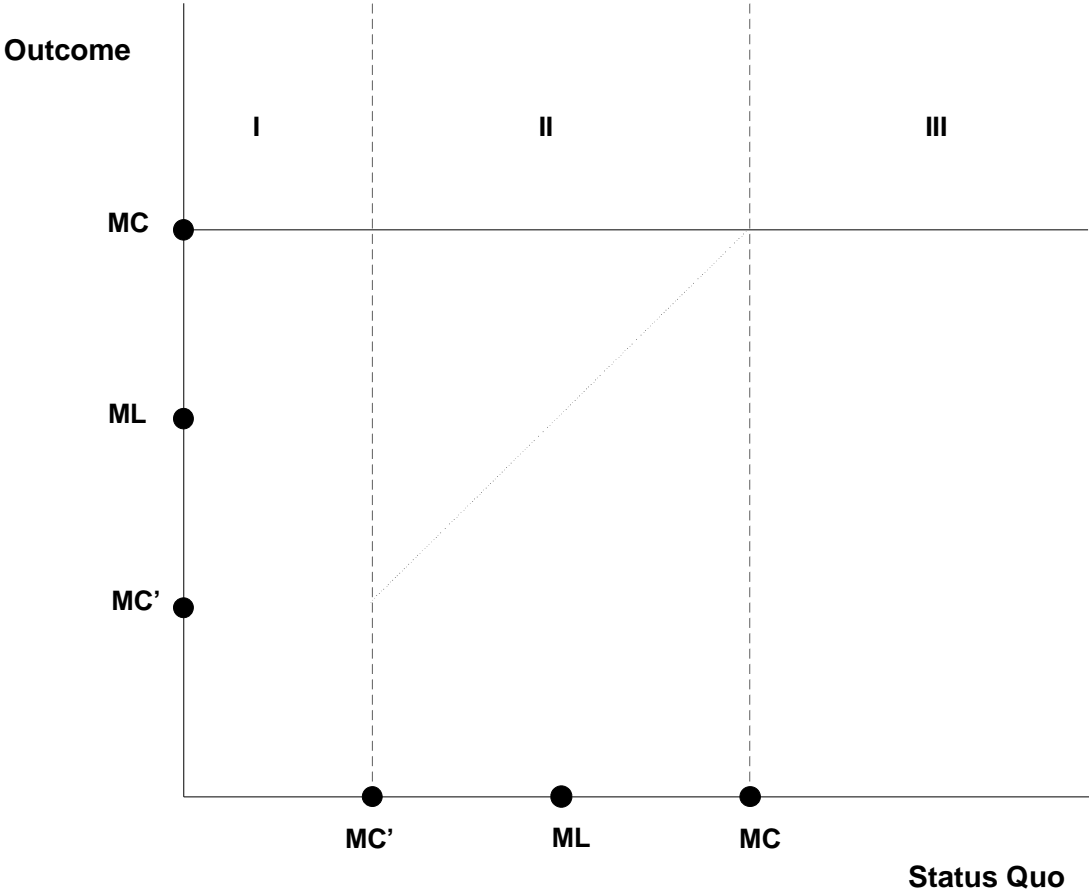
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